



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. E 559 OF 2020**

**KENYA CONCRETE, STRUCTURAL, CERAMICS,**

**TILES WOODPLYS AND INTERIOR DESIGN**

**WORKERS UNION.....CLAIMANT**

**VERSUS**

**INTEX CONSTRUCTION LIMITED.....RESPONDENT**

**AND**

**KENYA BUILDING CONSTRUCTION TIMBER**

**AND FURNITURE EMPLOYEES UNION.....INTERESTED PARTY**

**RULING**

1. Application dated 26/1/2021 seeks to have the interested party, Kenya Building, Construction, Timber and Furniture Products Employees Union to be enjoined in this suit as an interested party.
2. The application is premised on grounds set out on the face of the notice of motion and in the supporting affidavit of **Mr. Francis Murage** the General Secretary of the applicant union to wit that the respondent Intex Construction Limited is a member of Roads and Civil Engineering Constructors Association (RACECA). That the said Employer's Association has had a relationship with the intended interested party spanning over many years and the two have negotiated several Collective Bargaining Agreements over the years.
3. That the workers purported to have been recruited by the claimant are members of the intended interested party which receives their union dues.
4. That the applicant will be greatly prejudiced if this cause is heard and determined in exclusion of the applicant. That the application be allowed.
5. The claimant/union filed a replying affidavit of **Dishon Angoya**, in which grounds are advanced to refute the application for joinder citing Article 36(2) of the Constitution of Kenya, 2010 which guarantees all employees freedom of Association and Article 41 which guarantees employees the right to join a union of choice.
6. That the applicant cannot be heard to coerce employees of the respondent to remain as members of the applicant and there is evidence before Court that the employees in question herein have joined the claimant union to the exclusion of the applicant and the Roads and Civil Engineering Contractors Association (RACECA)
7. The issue for determination herein is whether the applicant union has satisfied the requirements for joinder as an interested party in this Court.
8. The Court relies on the Supreme Court decision in **Francis K. Muruatetu and Another –vs- Republic and 5 Others [2016] eKLR** which sets out the criteria for joinder of interested parties. The Supreme Court said that the following conditions have to be met by the intended interested party:-

*a. The personal interest or stake that the party has in the matter must be set out in the application.*

*b. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.*

*c. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.*

*d. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.*

9. The Court is satisfied that the intended interested party has demonstrated that it has a substantial interest in the subject matter of the suit and that it is in the interest of justice that it be heard before a determination of the issues is done by the Court.

10. The applicant has shown that it stands to suffer prejudice not remediable by way of costs or damages should orders adverse to its interest in the subject matter be made by the Court without giving the applicant a hearing.

11. The applicant has demonstrated further that it has brought the application without inordinate delay.

12. The Court finds that the applicant has met the above elements of an intended interested party. Accordingly, the application is merited and is hereby granted.

13 Directions as to the filing of pleadings by the interested party shall be

given on the date of the ruling.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 28<sup>TH</sup> DAY OF OCTOBER, 2021**

**Mathews N. Nduma**

**Judge**

**Appearances**

M/s Chege for Applicant

Mr. Angoya for claimant/union

Mr. Rapando for Respondent

Ekale – Court clerk